

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

FRED WAYNE KENT 113814)

Full name and prison number of)
plaintiff(s))

V.)

BOB RILEY; Governor of AL)

H.Ward McMILLAN JR.; Presiding)

Justice AL Ct. of Appeals,)

CALHOUN COUNTY CIRCUIT COURT)

Name of person(s) who violated
your constitutional rights.
(List the names of all the persons)

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DEBRA P. JACKSON, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALACIVIL ACTION NO. Q: 05CV 792-f
(To be supplied by the Clerk of the
U.S. District Court)

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? Yes () No (xx)
- B. have you begun other lawsuits in state or federal court relating to your imprisonment? Yes () No (xx)
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiff(s) _____

Defendant(s) _____

2. Court (if federal court, name the district; if state court, name the county)

3. Docket No. _____

4. Name of Judge to whom case was assigned _____

5. Disposition (for example: Was the case dismissed? Was it appealed? is it still pending?)

6. Approximate date of filing lawsuit _____

7. Approximate date of disposition _____

II. PLACE OF PRESENT CONFINEMENT St. Clair Correctional Facility -1000 St. Clair Rd. Springville, AL 35146-5582

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED Montgomery, AL and Calhoun County (Anniston) AL

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

NAME

ADDRESS

1. BOB RILEY 600 Dexter Ave. Montgomery, AL
2. H. Ward McMillan 300 Dexter Ave. Montgomery, AL
3. DONAL CAMPBELL 301 S. Ripley St. Montgomery, AL
4. CALHOUN COUNTY CIRCUIT COURT 25 W. 11th St. Anniston, AL
5. _____
6. _____

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED November 4th, 2004

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: DENIAL OF EQUAL PROTECTION AND DUE PROCESS OF LAW

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place, manner, and person involved).

SEE ATTACHED SHEET

STATEMENT OF FACTS

Fred Wayne Kent was convicted in the Calhoun County Circuit Court of 1st degree Robbery on September 24th, 1985. Pursuant to the mandates of §13A-5-9 Code of Alabama, 1975, Kent was sentenced to a term of Life without parole. The sentence was mandatory to Kent and any other person in the State of Alabama that came under its purview who had three or more prior convictions and was subsequently convicted of a Class A felony.

On May 25th, of 2000, the Alabama Legislature amended the 13A-5-9 to remove the mandatory sentences of Life and Life without parole and make them discretionary. This act was applied prospectively only. On September 29th, 2001, the Alabama Legislature again amended 13A-5-9 and called for the amended provisions to be provided retroactively to cases final before the original amendment.

On October 25, 2004, Kent filed for modification of his sentence pursuant to 13A-5-9.1 and Kirby v. State, 899 So 2d 968. Without the benefit of a hearing or any presentation normally associated with a sentencing hearing, the Calhoun County Circuit Court denied the "Modification petition". Kent was not represented by counsel or heard from any other ofrm of representation.

Since the advent of Kirby, Alabama Courts have overwhelmingly granted petitions from those who were represented by counsel in presenting modification requests, and overwhelmingly granted petitions whereby the petitioner had a hearing as set out by 13A-5-9.1 Code of Alabama, 1975. In addition, state courts have granted petitions on robbery convictions, murder convictions, rape convictions and 1st degree burglary convictions.

Kent has arbitrarily been denied the benefits of 13A-5-9. All prisoners sentenced under the pre-amended law who had three (3) prior convictions and were subsequently convicted of a Class A felony manditorily received life without parole. Pursuant to the amended version, only those who had the financial ability to hire attorneys or those who actually received a hearing have recognized the benefits of the amendment. Kent submits that the underinclusive nature in which the law is being applied has denied him due process.

GROUND TWO: DENIAL OF KENT'S 6th AMENDMENT RIGHT TO
COUNSEL

SUPPORTING FACTS: _____

SEE ATTACHED SHEET

GROUND THREE: DENIAL OF DUE PROCESS UNDER THE 14th
AMENDMENT

SUPPORTING FACTS: _____

SEE ATTACHED SHEET

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU. MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

The Plaintiff requests this Court to determine the Consitutionality of §13A-5-9.1 Code of Alabama 1975 and its current application in particular the lack of availability to counsel and the lack of a fair hearing on the subject matter of 13A-5-9.1. Kent would request this Court order a hearing on the matter in comliance with the 14th Amendment.

Thred Kent
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on 8-16-05
(date)

Thred Kent
Signature of plaintiff(s)

Sworn to and subscribed before me this the 16th day of August 2005.

Commission expires 2-2-2007.

Sherry G. Lofford
NOTARY PUBLIC